



CONSUMER NEWS

SAN DIEGO CITY ATTORNEY'S OFFICE

Foreclosure Consultants

March 2009

The California Legislature has recognized that “homeowners whose residences are in foreclosure are subject to fraud, deception, harassment and unfair dealing by foreclosure consultants from the time a Notice of Default is recorded ...until the time surplus funds from any foreclosure sale are distributed to the homeowner...” (Cal. Civil Code §2945(a))

For this reason, the Legislature has imposed consumer protection regulations on the operation of foreclosure consultant businesses.

DEFINITION OF FORECLOSURE CONSULTANT:

A foreclosure consultant is any person who, after a Notice of Default is recorded, offers to perform for a fee any of the following services:

1. Stop or postpone the foreclosure sale.
2. Delay the repayment of the mortgage loan.

3. Assist the owner to seek reinstatement as provided in Civil Code §2924c.
4. Obtain an extension of the reinstatement period for the owner.
5. Obtain a waiver of the acceleration clause in a deed or mortgage.
6. Assist the owner to obtain a loan or advance of funds.
7. Avoid damage to the owner's credit from the foreclosure.
8. Save the home from foreclosure.
9. Assist the owner to get any money from the sale of the property at foreclosure.

NO PAYMENT UNTIL SERVICES HAVE BEEN PERFORMED

A foreclosure consultant cannot charge or receive any payment for services until every service the consultant contracted to perform has been performed.

The fee cannot exceed 10% per year of the amount of any loan taken out by the owner.

A foreclosure consultant cannot place a lien on the property or take a wage assignment from the property owner.

A foreclosure consultant cannot be paid for services by a third person unless the consultant fully discloses this arrangement to the owner.

A foreclosure consultant is prohibited from acquiring any interest in the property in foreclosure from an owner with whom the consultant has contracted.. The consultant cannot take a power of attorney from an owner except to inspect the owner's documents.

WRITTEN CONTRACT REQUIRED

Every time a foreclosure consultant enters into an agreement to perform services for a homeowner, the agreement must be in a written contract. The contract must state the exact nature of all services the consultant is to perform and the amount of compensation to be paid. The contract has to include a notice to the property owner that the consultant cannot accept any

money until he/she has completed all the work and that the consultant cannot ask the property owner to sign a deed or lien on the property.

If the foreclosure consultant and the owner have negotiated the contract in another language, the contract must be written in the language of the negotiations.

The foreclosure consultant must provide the homeowner with a copy of the contract and a notice of cancellation form.

The foreclosure consultant must also prepare and deliver to the homeowner a notice of the owner's right to receive all or a portion of any surplus funds generated from the sale of the property at the foreclosure sale without paying any fees to a third party. The foreclosure consultant must obtain a receipt signed by each owner of the property and notarized, that they received a copy of this notice.

RIGHT TO RESCIND

A property owner who enters into a contract to hire a foreclosure consultant has 3 business days to cancel the contract from the date he/she signs the contract. (Beginning July 1, 2009, the right to rescind is 5 business days) The foreclosure consultant must inform the homeowner of the right to cancel in the contract, or the homeowner can cancel the agreement at any time.

CRIMINAL ACTS

A foreclosure consultant is guilty of a felony if he/she does any of the following:

1. Charges or receives any payment before he/she has fully performed all services he/she agreed to perform in the contract.

2. Charges or receives any fee, interest, or other payment exceeding 10% per year of the amount of any loan the consultant may make to the owner.
3. Takes a wage assignment or places a lien on the real or personal property of the owner.
4. Receives payment from a third party in connection with the services unless that has been completely disclosed to the homeowner.
5. Obtains any interest in the home that is in foreclosure from the homeowner.
6. Takes a power of attorney from the homeowner for any purpose other than to inspect documents as provided by law.
7. Induces or attempts to induce any owner to enter into a contract that does not comply with the provisions for written foreclosure consultant contracts set forth above.
8. Enters into an agreement to assist the homeowner in arranging for the release of surplus funds prior to 65 days after the trustee's sale is conducted.

The maximum penalty for each violation of the above laws is a fine of \$10,000 and 3 years in prison.

**CONSULTANTS MUST BE
REGISTERED WITH THE STATE**

Every foreclosure consultant who does business in California must register with the California Dept. of Justice. To qualify for registration, the applicant must not have been convicted of any crime involving fraud, misrepresentation, dishonesty or a violation of the foreclosure consultant law.

The person registering as a foreclosure consultant must maintain a surety bond in the amount of \$100,000 that will be for the benefit of homeowners who

may be damaged by the foreclosure consultant's violation of the foreclosure law in the future.

It is a misdemeanor to operate as an unregistered foreclosure consultant in California, punishable by up to \$25,000 and 1 year in jail.

EXCEPTION FOR LAWYERS

Lawyers who are licensed to practice law in California can provide the services that a foreclosure consultant provides if the work is in the course of the lawyer's practice.

A lawyer is prohibited from being in business with someone who is not a lawyer, so this exception applies only if the customer deals with an attorney or an attorney's staff under the direction of the attorney.

LIMITED EXCEPTION FOR REAL ESTATE PROFESSIONALS

Licensed real estate professionals must comply with the foreclosure consultant act, with the exception that they may collect fees associated with their services when a property is foreclosed, i.e. their commissions.

**San Diego
City Attorney's Office
Consumer and Environmental
Protection Unit
(619) 533-5600**

Newsletter written by Tricia Pummill. Source: Civil Code §§2945-2945.11.

The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

To report violations of this law and other consumer protection laws, call the City Attorney's Hotline at **(619) 533-5600**.